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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,502	07/30/2003	Gary Mitchell Davenport	P138	7908
27752 7590 02/26/2009 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
JONES, DAMERON LEVEST				
ART UNIT		PAPER NUMBER		
1618				
MAIL DATE		DELIVERY MODE		
02/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/630,502

Applicant(s)

DAVENPORT ET AL.

Examiner

D. L. Jones

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2009.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-949)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

ACKNOWLEDGMENTS

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/2/09 has been entered.

Note: Claims 1-27 are pending.

WITHDRAWN CLAIMS

2. Claims 1-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention/species.

RESPONSE TO APPLICANT'S ARGUMENTS

3. The Applicant's arguments filed 1/2/09 to the rejection of claims 19-27 made by the Examiner under 35 USC 103 have been fully considered and deemed non-persuasive for reasons of record in the office action mailed 7/1/08 and those set forth below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of claims 19-27 rejected under 35 U.S.C. 103(a) as being unpatentable over DeBoer et al (JP 02227051) in view of Mattson (US Patent No. 4,034,083) is MAINTAINED for reasons of record in the office action mailed 7/1/08 and those set forth below.

In summary, Applicant asserts that independent claim 19 is directed to a veterinarian or pharmaceutical composition wherein the mammal is selected from cats and rabbits and the composition is selected from kibbles, high moisture compositions, and semi-dry compositions. In addition, Applicant asserts that independent claim 21 is a pet food composition. Also, Applicant asserts that the compositions of Mattson while directed to polyol fatty acid polyesters are fortified with fat soluble vitamins and used in pharmaceutical compositions for treating and/or preventing hypercholesterolemia and as an ingredient in low calorie foods, the compositions of DeBoer et al are directed to a dietary fiber used in low calorie foods comprising an indigestible single blend polyol fatty acid polyester. Applicant further asserts that the instant invention is directed to nutritionally balanced compositions for cats and rabbits that are kibbles, high moisture compositions, and semi-dry compositions. Applicant list some of the food products of DeBoer et al which include cakes, meat snacks, potato chips, etc. in order to illustrate that the products of DeBoer et al are not necessarily nutritionally balanced. Also, Applicant lists some of the products of Mattson (gelatin capsules, low calorie products, fat containing salad oil, margarine, etc.) to illustrate that the products of Mattson are not necessarily nutritionally balanced. Applicant asserts that vitamins are used to fortify the polyesters of Mattson. Hence, Applicant has concluded that the Mattson and DeBoer et al documents do not render the instant invention obvious because the documents relate to the fortification of the polyester with particular vitamins, not to the nutrition of the overall compositions. Thus, there is not expectation of success in arriving at a

nutritionally balanced composition for a cat or rabbit that provides an increase in fecal hair excretion or the treatment of hairballs.

The rejection is deemed proper for the following reasons. First, Applicant is once again reminded that a recitation of the intended utility in the preamble does not impart patentability to a known composition (*In re Spada*, 911 F.2d 705, 15 USPQ 2d 1655 (Fed. Cir. 1990)). Thus, a statement of intended use carries patentable weight in a method claim. Secondly, it should be noted that both Applicant and the cited prior art disclose that the polyol fatty acid polyester compositions may be used as pharmaceutical compositions (e.g., Mattson (see abstract) and DeBoer et al (pages 3-4, bridging paragraph of the translated document)). Thirdly, both DeBoer et al and Mattson disclose that their polyol fatty acid polyester compositions may have various forms. Applicant is reminded that in order for a different form of a known composition to be patentable, it must be more efficacious or possess new properties by a combination with other ingredients and not merely a change of form which has the advantages which one skilled in the art would expect from the change (*Glue Co. v. Upton* (USSC 1878) 97 US 3, 24 L Ed. 985). Hence, since both the cited prior art and Applicant disclose the same composition, the properties would be expected to be the same since the skilled artisan would recognize that a product (composition) is inseparable from its properties. Furthermore, there is no requirement that the prior art must suggest that the claimed product will have the same/similar utility as that discovered by Applicant in order to support a legal conclusion of obviousness (*In re Dillion*, 919 F.2d 688, 696, 16 USPQ 2d, 1897, 1904 (Fed. Circ. 1990)).

In regards to Applicant's arguments about the instant invention being nutritionally balanced, if both the cited prior art and Applicant disclose that additional components may be added to result in a nutritionally balanced products, then a statement that 'said composition is a nutritionally balanced composition' is not different from the prior art of record. Furthermore, Applicant is reminded that independent claims 19 and 21 are directed to product containing a polyol fatty acid polyester have a certain range wherein no specific vitamins, etc. are disclose as having to be present in the claims.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Art Unit: 1618

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. Jones/
Primary Examiner
Art Unit 1618

February 24, 2009